IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Dalip Singh & Others Vs. State of Raj.
(D.B. Criminal Appeal No.98/1999)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 2-2-1999 in Sessions Case No.4/1998 passed by Shri Radhey Mohan Srivastava, RHJS, Additional Sessions Judge Behror, District Alwar.

2. Ram Singh Vs. State of Raj.
(D.B. Criminal Appeal No.958/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 21-8-2004 in Sessions Case No.95/2002 (38/1999) passed by Shri Hari Kishan Khhichar, RHJS, Additional Sessions Judge (Fast Track) Behror, District Alwar.

Date of Judgment: March 08, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.N.Mathur, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Shri Ram Yadav, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Five appellants in appeal No.98/1999 were put to trial before learned Additional Sessions Judge Behror District Alwar in Sessions case No.4/1998, who vide judgment dated February 2, 1999 convicted and sentenced them as under:-

Dalip Singh, Madu Ram, Mahendra Singh, Smt.Shyobai and Smt.Shakuntla:

U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.4000/-, in default to further suffer simple imprisonment for four months.

U/s.148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.100/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. The appellant Ram Singh in appeal No.958/2004, who was tried separately before learned Additional Sessions Judge Behror in Sessions case No.95/2002 (38/1999) was convicted and sentenced vide judgment dated August 21, 2004 thus:-

U/s.302/149 IPC:

To suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer simple imprisonment for four months.

U/s.148 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.100/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

3. Since appellants Dalip Singh and Madu Ram died in jail during pendency of appeal their appeal stands abated.

4. Informant Amar Singh (Pw.2) on October 6, 1997 lodged a written report (Ex.P-1) at the Police Station Behror to the effect that on the said day around 7.00 PM as many as 10 persons including appellants killed his cousin Ruda Ram @ Devendra, whose dead body was lying in the field

of Banhad-wala. On that report a case under section 302 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Behror. Charges under sections 148 and 302 read with 149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Dalip was examined as a defence witness. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

5. We have given our anxious consideration to the rival submissions and with the assistance of learned counsel we have gone through the evidence on record.

6. Death of Rudmal @ Devendra was homicidal in nature. As per post mortem report (Ex.P-18) he received following ante mortem injuries:-

> 1. Incised wound 7x ¾ cm x upto brain, brain matter coming out, blood clots present over Rt.side of forehead and extending upto root of nose oblique placed.
> This is fracture of frontal bone Rt.side & fracture of nasal bone membrane cut under line entering Brain Rt.
> 2.Frontal lobe of brain lacerated lacerated of size 3 x 2 x 1cm Blood clots present over his surface of brain membrane & brain conjested.
> 3.Lacerated wound 2 x ½ cm x muscle deep over 1cm Rt.eye brow laterally. Blood clots present transversly placed
> 4.Incised wound A. 8 x ¾ cm x upto brain blood clots present, over the Rt.parietal temporal region of scalp oblique placed Brain matter coming out.
> B. Incised wound 3 x ½ x upto brain over the Rt.parietal region of scalp, medial to right injury No.3A oblique placed blood

clots present Brain matter coming out.
C. Incised wound 5 x ¾ cm x upto brain over line parieto temporal Rt.side below and lateral to line Injury No.3A oblique placed blood clots present Brain matter coming out.
5.There is multiple fracture of Rt. Parietal & temporal bone under the injury No.3A,3B, 3C.
Membrane cut inside of injury No.3A,3B 3C
6.Brain.Rt. Parietal & temporal lobe lacerated under injury No.3A, 3B & 3C size 5 x 3 x 1½ cm blood clots present over his surface of Brain.
7.Lacerated wound 5 x ¾ cm x muscle deep over left front parietal part of scalp, oblique placed blood clots present near mid line.
8.Lacerated wound 4 x 1cm x upper bone left parietal part of scalp, oblique blood clots present.
9.Lacerated wound 3 x ¾ x coming to nose over left parietal part of scalp behind the injury No.5 oblique blood clots present.
10.Incised wound 3 x ½ cm x bone deep over the occipital part of scalp in mid line oblique placed blood clots present. There is fracture of occipital bone under the injury.
11.Bruise 3 x 2cm over face Rt.side nose lateral angle of Rt.eye 1 reddish colour.
12. Bruise multiple abrasions extending from angle of Rt.mandible to the posterior side of Rt.ear size 10 x 5cm bruise reddish colour.
13. Lacerated wound 2cm x muscle deep over line Rt.fore medial 1/3 face posterior blood clots present
14. Abrasion 6 x ½ cm over the back side of Rt.buttock
15. Bruise reddish colour 8 x 2cm at Rt.thigh blood present posterior oblique.
16. Incised wound3 x ¾ x muscle deep over the Rt.joint lateral oblique blood clots present
17. Abrasion 2 ½ x ½ cm over the left leg middle 1/3rd part medially.
18. Amputation Stump of thermal phalynx of left middle finger margin of wound sharp blood clots present.
19. Closed fracture of proximal phalynx of 2, 3, 4, 5 fingers of left hand.
20. Bruise & swelling reddish colour 5 x 3cm over his left hand posteriorly
21. Abrasion ½ x ½ cm over posterior aspect of left elbow

joint.
22. Bruise reddish colour 3 in number size 6 x 2cm = 4 x 2 ½ cm, 3 x 1½ over left upper arm.

According to Dr. Kaidar Nath Agrawal (Pw.11) the cause of death of was coma & syncop as a result of head injury.

7. The prosecution case rests on the testimony of Mahendra Singh (Pw.3) and Kalu Ram (Pw.4) who were the eye witnesses of the occurrence. A look at the testimony of these witnesses reveals that they gave a graphic description of the incident. Mahendra Singh and Kalu Ram although were residing at village Maharajabas, had gone on the date of incident to village Banhadgaon to meet one one Arjun Gujar. Around 6.30 PM when they were passing near Banhad ki Dhani they saw Madu Ram, Roshan, Dilip, Ram Singh, Jagat Singh, Mahendra, Gyarsi, Sheo Bai and Shakuntala armed with deadly weapons. All of them made assault on Rudmal and killed him.

8. Learned counsel for the appellants vehemently urged that testimony of these witnesses could not have been relied on since they were chance witnesses. We find no merit in this contention. Having carefully scanned the testimony of Mahendra Singh and Kalu Ram from the point of view of trustworthiness, we find that they were present at the time of incident. The incident did occur at place X shown in the site plan (Ex.P-3), which was adjacent to the pathway between Maharaja Bas and Dhani Banhad. Since Mahendra Singh and Kalu Ram were passing through the pathway, they were in a position to see the incident. Testimony of these witnesses is consistent qua the appellants Mahendra Singh and Ram Singh. However possibility of over implication of appellants Shakuntala and Sheo Bai cannot be ruled out.

9. At this juncture we deem it appropriate to analyse the legal position as to the relevancy to the evidence of chance witness. In Ismail Vs. Momin (AIR 1941 Privi Council 11) it was held that though the chance witness is not necessarily a false witness, is proverbially rash to act upon such evidence. In the case of a chance witness, if that witness gives sufficient reasons for his presence, that evidence can be accepted. In Baldev Singh Vs. State of MP (2003)9 SCC 45, the Apex Court, where chance witness failed to assign any convincing reason for being at the place of incident at that abnormal hour of the day in full summer, held that testimony of such witnesses could not be relied upon.

10. The expression `chance witness' is borrowed from the countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle.

11. In Thangaiya Vs. State of Tamil Nadu (2005 Cri.L.J. 684) the Apex Court indicated as under:-

> "In a murder trial by describing the independent witnesses as `chance witnesses' it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere `chance witnesses'. The expression `chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence. In instant case, the plea of the

> accused that PW-3 was `chance witness' who has not explained how he happened to be at the alleged place of occurrence, it has to be noted that the said witness was an independent witness. There was not even a suggestion to the witness that he had any animosity towards the accused. Therefore, there is no substance in the plea that evidence of independent witness which is clear and cogent is to be discarded."

12. Since we find the testimony of Mahendra Singh and Kalu Ram reliable qua appellants Mahendra Singh and Ram Singh, they are held guilty under section 302/34 IPC. We however grant benefit of doubt to appellants Shyobai and Shakuntala.

13. For these reasons, we dispose of instant appeals in the following terms:-

(i) Appeal of appellants Dalip Singh and Madu Ram stands abated since both of them died in jail.

(ii) Appeal of appellants Shyobai and Shakuntla stands allowed and they are acquitted of the charges under sections 148 and 302/149 IPC. They are on bail, they need not surrender and their bail bonds stand discharged.

(iii) Appeals of appellants Mahendra Singh and Ram Singh stand dismissed and each of them stands convicted under section 302 read with 34 IPC and sentenced to suffer imprisonment for life and fine of Rs.4000/-, in default to further suffer imprisonment for four months. They however stand acquitted of the charge under section 148 IPC. Appellant Ram Singh is on bail, his bail bonds stand cancelled and he shall be taken in custody forthwith. Registry is

directed to issue non bailable warrants against appellant Ram Singh.

(iv) The impugned judgment of learned trial court stands modified as indicated above.

(Vineet Kothari),J. (Shiv Kumar Sharma)J.

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